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File No. O. Prob. of offenders /42

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Legal **DEPARTMENT**

A **BRANCH** p 6(E)

Subject:—

Opinions under the Bombay Probation of offenders Act, 1938.

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Submitted.

2 Please see pp. 1-3 ante.

Section 14 of the Bom. Probation of Offenders Act,1938 provides that in any area where this Act is in force, no Court shall make an order under section 562, Criminal Procedure Co Code in respect of any first offender. The Resident Magistrate, Hubli considers that a person should be dealt with under section 562 Crim.Pro.Code and not under sections 4 and 5 of the P.& O. Act when such a person resides in an area where the Act is not in force but is tried in an area where the Act is in force. The Collector of Dharwar concurs with this view(p.1). But the Comm. S.D.differs from this view. He is of opinion that offenders to be dealth with under the Act would be those who commit offences within the area notified under section 1(3) The question for consideration of the P.L.A. is whether an offender should be dealt with under section 562 Crim. Pro.Code or under sections 4 and 5 of the Probation of offenders Act, 1938, where the offender resides in an area where the Act is not in force but is tried in an area here it is in force.

3 Section 14 of the Probation of Offenders Act,1938 provides that in any area in which the Act is in force, no Court shall make an order under sec. 562Crim.Pro.Code in respect of any first offender. Section 1 (3) provides for bring the Act into force in any particular area. Proabtion and "Supervision" orders under section 2(C) and (e) mean orders made under sub-sections (1) and (2) of section 5 respectively Under section 3 certain Courts are empowered to pass orders under the Act. Section 4 provides that not withstanding any thing contained in any enactments for the time being in force in any case in which a person is convicted of any offence punishable with not more than two years' imprisonment or fine or both and no previcious conviction is proved against him, the Court by which he is convicted may, if it thinks

fit and if certain conditions are fulfilled instead of sentencing him to any punishment, release him after dur admonition. Section 5(1) also provides that ~~notwithstanding~~ notwithstanding anything contained in any enactment for the time in force, when-

(a) any male person is convicted of any offence not punishable with dealth or transportable for life, or

(b) any woman is convited of an offence of any kind,

if it appears to the Court by which the offender is convicted that on certain conditions being fulfilled it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond with or without sureties. Provided that the Court shall not pass a probation order under this section unless it is satisfied that the offender or one of his surties (if any) has a fixed place of abode or regular occupation and is likely to continue to have such place of abode or such occupation, within the local limits of its jurisdiction during the period of the bond. The words underlined above in sections 4 and 5 show that the Court by which the offander is convited has power to pass an order for release after admonition or on probation of good conduct provided the Court is situate in the area in which the Act is in force. It is not necessary that the offender must have a place of residence within the jurisdiction of the Court which passes the order. Under the provise to section 5(1) it does not appear necessary that the offender must have a place of residence within the jurisdiction of the Court which passes the order. Because the bond to be executed may be with or without sureties and if one of his sureties has a fixed place of abode or regular occupationn within the jurisdiction of the Court it is sufficient. The

The Co rr's view in para 8 of his enforst. (p.3ante) that the offenders who commit offences within the jurisdiction of the Court in which the Act has come into force should be dealt with under sections 4 and 5 appears to be correct. In view of the specific provision contained in section 14 it appears that if the Court has jurisdiction to pass an order under section 4 or 5 it cannot pass an order under section 562 of the Crim. Pro.Code.

Sd/ P.S.N. 10/8

A.3. The Bombay Probation of Offenders Act, 1938 has been applied to the municipal areas of Dharwar, Gadag and Hubli in the district of Dharwar with the result that section 562 Criminal Procedure Code is rendered inapplicable to the first offenders in those local areas. It appears that the Courts empowered to exercise powers under the Bombay Probation of Offenders Act in those local areas have jurisdiction over other areas. The question raised for the consideration of the P.L.A. is whether (1) the residence of an offender in the local area, (2) his trial and conviction in the local area irrespective of place of offence (i.e. whether it be within or without the local area), or (3) his commission of offence in the local area would entitle him to the benefit under the Bombay Probation of Offenders Act.

2 The proviso to section 5(1) of the Bombay Probation of Offenders Act, 1938 provides that the court shall not pass a probation order under this section unless it is satisfied that ~~the~~ the Offender or one of his sureties if any has a fixed place of abode or regular occupation and is likely to continue to have such place of abode or regular occupation within the local limits of its jurisdiction during the period of the bond. It is apparent from this proviso that the residence of the offender in the local area is not material and consequently the first alternative must be ruled out.

Office of the R.L.A.

The Bombay Probation of Offenders Act, 1938 is in force only in certain notified areas of the Province. The question for the R.L.A.'s consideration is whether an offender who resides outside a notified area can be dealt with under sections 4 and 5 of the Act.

2 The place of the offence ordinarily determines the court's jurisdiction. Other factors occasionally are decisive, but practically never the offender's place of residence. That is a principle which is laid down in section 177 and succeeding sections of the Code of Criminal Procedure. There appears to be nothing in the Bombay Probation of Offenders Act, 1938 which suggests that in the case of offenders who are fit to be dealt with under that Act the place of residence is to play any part in determining the court's jurisdiction. The Commissioner, Southern Division, is correct in his view that in the case of such offenders the place of residence is not relevant. So far as the question in this reference is concerned no amendment of the Act appears necessary.

Sd/- P.N.M. 7/9

Remembrancer of Legal Affairs.

U.R. to H.D. , No. 7251, dated the 8th September 1942.